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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 20th July, 2017

+ **MAC APPEAL 206/2008**

**ICICI LOMBARD GENERAL INSURANCE
CO. LTD.**

..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

KAVITA & ORS.

..... Respondents

Through: Mr. D.K. Sharma, Adv. for R-1
& 2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Arun, a bachelor, son of the first and second respondents (claimants) was driving motor cycle bearing no.DL-7S-AH-7419 on 20.07.2006 when it came to be involved in a collision against a truck which resulted in he with Ashok Kumar (R1W1) riding on the pillion at that stage falling down on the divider. Arun suffered injuries and died in the consequence.

2. The accident claim case (MACT 452/06) instituted on 09.10.2006 sought compensation under Section 163A of Motor Vehicles Act, 1988 against the owner of the said motor cycle, she being the third respondent herein, it concededly insured against third

party risk for the period in question with the appellant / insurance company.

3. The Tribunal, awarded compensation, by judgment dated 09.01.2008, which is questioned by the appeal at hand, the contention of the insurer being that the deceased having borrowed the vehicle from the owner (insured) had stepped into her shoes and, therefore, such risk was not covered by the insurance policy against third party.

4. This contention in the given facts and circumstances must be accepted in view of the decision of this court in *Oriental Insurance Co. Ltd. Vs. Shakuntala*, MACA 142/2007 dated 02.03.2016 with reference to the decisions of the Supreme Court in *New India Assurance Company Ltd. vs. Sadanand Mukhi & Ors.*, (2009) 2 SCC 417 and *Ningamma & Anr. vs. United India Insurance Company Ltd.*, (2009) 13 SCC 710.

5. The amount deposited by the insurance company shall be refunded with statutory amount.

6. The appeal is, thus, allowed. The impugned judgment is set aside.

R.K.GAUBA, J.

JULY 20, 2017

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